

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

VALORIE COLBY,)	
)	
Claimant,	)	IC 2004-005317
	)	IC 2004-013347
v.)	
	)	ORDER
WALMART STORES, INC.,)	
)	
Employer,	)	filed January 26, 2007
)	
and)	
)	
AMERICAN HOME ASSURANCE,)	
)	
Surety,)	
)	
Defendants.)	
_____)	

Pursuant to Idaho Code § 72-717, Referee Alan Reed Taylor submitted the record in the above-entitled matter, together with his proposed Findings of Fact and Conclusions of Law to the members of the Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed Findings of Fact and Conclusions of Law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has proven she suffers permanent partial impairment of 4% of the whole person due to her industrial accident.
2. Claimant has not proven that her industrial accident aggravated her right hip dysplasia, thus Claimant is not entitled to medical benefits for her hip dysplasia.
3. Claimant has not proven she suffers any permanent disability due to her industrial

injury in excess of her 4% permanent impairment.

4. Claimant has not proven her entitlement to additional temporary disability benefits.
5. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all issues adjudicated.

DATED this 26th day of January, 2007.

INDUSTRIAL COMMISSION

/s/
James F. Kile, Chairman

/s/
R.D. Maynard, Commissioner

/s/
Thomas E. Limbaugh, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on 26th day of January, 2007, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

EDGAR L ANNAN
5915 S REGAL ST STE 210
SPOKANE WA 99223

ALAN K HULL
PO BOX 7426
BOISE ID 83707-7426

lbs

/s/

ORDER - 2

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

VALORIE COLBY,)	
)	
Claimant,	)	IC 2004-005317
	)	IC 2004-013347
v.)	
	)	FINDINGS OF FACT,
WALMART STORES, INC.,	)	CONCLUSIONS OF LAW,
	)	AND RECOMMENDATION
Employer,)	
)	
and)	
	)	filed January 26, 2007
AMERICAN HOME ASSURANCE,)	
)	
Surety,)	
)	
Defendants.)	
_____)	

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Coeur d'Alene on December 9, 2005. Claimant, Valorie Colby, was present in person and represented by Edgar ÑedÛAnnan of Spokane; Defendant Employer, WalMart Stores, Inc., and Defendant Surety, American Home Assurance, were represented by Alan K. Hull, of Boise. The parties presented oral and documentary evidence. This matter was then continued for the taking of post-hearing depositions, the submission of briefs, and subsequently came under advisement on October 23, 2006.

ISSUES

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 1

In final briefing, Claimant withdrew her claim for attorney fees, thus the issues presently to be resolved are:

1. The extent of Claimant's permanent partial impairment, if any, resulting from her industrial accident;
2. Whether Claimant is entitled to continuing medical care for an industrial aggravation of her pre-existing right hip dysplasia;
3. The extent of Claimant's permanent partial disability in excess of permanent impairment, if any, resulting from her industrial accident; and
4. Whether Claimant is entitled to temporary total disability benefits for the periods of time she was not working between July 15, 2004, and July 29, 2005.

ARGUMENTS OF THE PARTIES

Claimant maintains that her industrial accident caused chronic lumbar strain resulting in a 5% permanent impairment of the whole person. She further asserts that her industrial accident also aggravated her pre-existing right hip dysplasia for which she is entitled to medical benefits. Claimant argues that she is entitled to at least a 15% permanent disability, inclusive of impairment. Lastly, she asserts her entitlement to additional total temporary disability benefits for approximately one year.

Defendants assert that Claimant's continuing hip problems were not aggravated by her industrial accident, that she is entitled to no permanent impairment for her lumbar strain, no permanent disability, and no additional temporary disability benefits.

EVIDENCE CONSIDERED

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 2

The record in this matter consists of the following:

1. The testimony of Claimant taken at hearing;
2. Joint Exhibits 1 through 19 admitted at hearing;
3. Deposition of Claimant taken April 22, 2005;
4. Telephonic Deposition of Claimant taken June 30, 2005;
5. Deposition of Michael DiBenedetto, M.D., taken January 30, 2006;
6. Deposition of John McNulty, M.D., taken January 30, 2006;
7. Deposition of J. Craig Stevens, M.D., taken January 31, 2006; and
8. Deposition of Douglas Crum, C.D.M.S., taken February 24, 2006.

All objections made during the deposition of Dr. McNulty are overruled. Defendants' objections to Dr. DiBenedetto's deposition testimony regarding his post-hearing examination of Claimant are sustained; all other objections to Dr. DiBenedetto's testimony are overruled. All objections made during the deposition of Dr. Stevens are overruled. All objections made during the deposition of Douglas Crum are overruled. After having considered the above evidence, and the arguments of the parties, the Referee submits the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Claimant was born in 1953. She was 52 years old at the time of the hearing. Claimant attended school in Oregon but dropped out during the eighth grade. In 1981 she obtained her GED.

2. Commencing at approximately age seven, Claimant experienced occasional discomfort in her right hip. She did not seek medical treatment, and hip pain did not significantly

limit her activities until her first pregnancy.

3. In her youth, Claimant worked at several grocery stores. She later worked as a cashier at a video rental store, a cashier and stock clerk at a hardware store, a shoe clerk at K-Mart, and as a claims processor at Viking Insurance.

4. In 1985, Claimant moved to Sandpoint and worked as a bookkeeper at a bank. She subsequently worked at JC Penney as a sales associate.

5. Claimant married, gave birth to three children, and remained at home caring for her children from 1987 until 1994. Her right hip bothered her during the final months of her first pregnancy, but improved after her child was born.

6. In 1994, Claimant became a resident apartment manager. She cleaned the apartments and the grounds, and earned \$175 per month.

7. Claimant then moved to Oregon where she studied at Mount Hood Community College from approximately 1999 through 2001. She received computer and database management training, and medical billing training through on-line courses. She also worked as an on-site apartment manager.

8. On December 10, 2000, Claimant sought treatment at the Mount Hood Medical Center after she awoke that morning with left flank and low back pain. This condition apparently resolved promptly.

9. In 2001, Claimant saw Jim Weber, M.D., complaining of right hip pain and feeling like her hip went out. Dr. Weber noted dysfunction of the right innominate and tenderness in the right SI region. Claimant's hip pain abated within a few weeks.

10. In 2001, Claimant returned to Sandpoint and worked as a cashier at several gas

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 4

stations.

11. In September 2002, Claimant started working at WalMart as an inventory control specialist (ICS). She worked in that position for about 10 months unloading trucks, palletizing freight for distribution, and distributing freight throughout the store. She frequently lifted items weighing up to 50 pounds. She used pallet jacks to transport freight and wore a Velcro back brace.

12. During her employment at WalMart, Claimant noted an episode of right hip pain, with no apparent cause, which promptly resolved itself.

13. From August 2003 until February 2004, Claimant worked in WalMart's claims department where she processed customer claims and vendor recalls. Claims work was much less physically demanding than ICS work. On one occasion Claimant briefly left a camera unattended while she helped another WalMart associate. The camera was gone when she returned to her work station. It was later found in a dumpster. Claimant was written up for the loss of the camera, and demoted. She was assigned to scan all new incoming freight and put back on ICS.

14. Defendants acknowledge that on May 3, 2004, Claimant suffered an injury while unloading freight at WalMart. After several hours of unloading freight that day, Claimant was assigned to gather and move shopping carts. Afterwards she was winded and felt pain in her lower back. Claimant testified "I just got so wobbly and literally shaking like a leaf, just shaking, couldn't control anything, couldn't lift my arms up, couldn't control my legs." Colby Deposition of April 22, 2005, p. 72, Ll. 10-13. She was unable to finish her shift and told her supervisor that she was sick and needed to go home. The next day Claimant noted increased back pain and did not work. She

then reported the incident as an accident. Claimant testified she was earning \$8.92 per hour at the time of her accident.

15. On May 5, 2004, Claimant went to Bonner General Hospital for her continuing low back pain. She was diagnosed by Charlene DeHaven, M.D., with acute lumbosacral strain and directed to stay off work until Monday, May 9th. On May 10, 2004, Claimant presented to J. Craig Stevens, M.D. He recorded her complaints of low back pain and back stiffness, diagnosed acute lumbosacral strain, prescribed physical therapy, and released her to light-duty work with a 10-pound lifting restriction. Claimant worked light duty for a week as a door greeter. She returned to Dr. Stevens on May 17, 2004, who diagnosed left SI strain and lumbar strain, and increased her lifting restriction to 20 pounds.

16. On May 18, 2004, Claimant commenced physical therapy with Keith Kirscher, who recorded her primary area of pain as the left iliac crest. Claimant made good progress in physical therapy sessions on May 18, 20, and 21, 2004.

17. On May 21, 2004, Claimant reported during her physical therapy session that her right hip almost "gave out" the previous night, that she had experienced occasional right hip problems in the past but none for the last year or two. On May 24, 2004, she reported during her physical therapy session that her hip had gone "back in" and she had no hip problems that day. Her low back pain was decreasing.

18. On May 26, 2007, Dr. Stevens increased Claimant's lifting restriction to 30 pounds and noted that her strains were slowly improving. He ordered continued physical therapy.

19. On May 27, 2004, Claimant reported during physical therapy that her right hip was "but" secondary to sleeping wrong. She continued to progress in therapy and by June 4, 2004,

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 6

Claimant reported that she felt good and was doing well with a pain level of only 0-1 on a scale of 1 to 10. She was discharged from physical therapy.

20. On June 7, 2004, Dr. Stevens gave Claimant a full work release. Claimant worked in WalMart's claims area for several more weeks and by the end of June she returned to ICS, unloading and distributing freight. Claimant testified that her back hurt doing ICS work, but that she did not inform anyone. She inquired about less physically demanding positions at WalMart, but nothing was available. On July 15, 2004, Claimant voluntarily terminated her employment with WalMart.

21. Claimant did not work again until August 24, 2004, when she worked for one day palletizing presto logs at Lignetics. The logs weighed only five pounds each, however, palletizing required rapid and repeated bending. Claimant developed severe back pain and was unable to continue after one day. She spent the next several days in bed until her back pain abated and she was able to resume her normal activities.

22. Claimant next worked on October 13, 2004, when she began working at a convenience store as a bookkeeper. She noticed that prolonged sitting increased her hip pain. She worked for approximately five weeks and then attempted cashiering which required prolonged standing and resulted in increased hip pain. By November 5, 2004, Claimant left her employment at the convenience store because she was no longer able to continue due to hip pain.

23. On November 5, 2004, Claimant presented to Bonner General Hospital with complaints of hip pain and stating that her hip was "almost out" and that her hip goes "but" when her "back injury acts up." Hearing Exhibit volume 2, p. 454. She also described left low back and right hip pain. Right hip x-rays were taken which showed benign bone cysts and possible effusion in the right hip.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 7

24. On November 8, 2004, Claimant presented to Dr. Stevens with primary complaints of right hip pain. X-rays showed changes present in the right acetabulum and ischium consistent with a dysplastic hip. Dr. Stevens referred Claimant to orthopedist Michael DiBenedetto, M.D. Also on November 8, 2004, Claimant presented to Judy Bell, M.D., who recorded Claimant's history of an onset of right hip pain from standing while cashiering several days earlier.

25. Claimant was treated by Dr. DiBenedetto commencing in November 2004, for right hip pain.

26. On January 10, 2005, Claimant was T-boned in a motor vehicle accident and suffered severe hip and low back pain which lasted more than four weeks. She was seen at Bonner General Hospital and treated by Dr. DiBenedetto.

27. On February 23, 2005, Claimant underwent a bone scan which revealed no recent hip injury. On February 25, 2005, she underwent a lumbar MRI which showed mild disc bulging at multiple levels. On February 28, 2005, Claimant underwent a right hip MRI which showed slight lateral displacement of the right femoral head from the acetabulum compared to the left.

28. In March 2005, Claimant commenced working part-time as a cashier at another convenience store. She left in May 2005 because the prolonged standing aggravated her hip and back pain.

29. At the time of hearing, Claimant lived in Sandpoint and was taking an on-line medical billing course. She was working full-time as a receptionist and assistant dispatcher earning \$8.00 per hour. Her duties essentially permitted her to sit or stand at her discretion.

DISCUSSION AND FURTHER FINDINGS

30. The provisions of the Workers' Compensation Law are to be liberally construed in

favor of the employee. Haldiman v. American Fine Foods, 117 Idaho 955, 793 P.2d 187 (1990). The humane purposes which it serves leave no room for narrow, technical construction. Ogden v. Thompson, 128 Idaho 87, 910 P.2d 759 (1996).

31. **Impairment.** "Permanent impairment" is any anatomic or functional abnormality or loss after maximal medical rehabilitation has been achieved and which abnormality or loss, medically, is considered stable or non-progressive at the time of evaluation. Idaho Code § 72-422. "Evaluation (rating) of permanent impairment" is a medical appraisal of the nature and extent of the injury or disease as it affects an injured employee's personal efficiency in the activities of daily living, such as self-care, communication, normal living postures, ambulation, traveling, and non-specialized activities of bodily members. Idaho Code § 72-424. When determining impairment, the opinions of physicians are advisory only. The Commission is the ultimate evaluator of impairment. Urry v. Walker & Fox Masonry Contractors, 115 Idaho 750, 755, 769 P.2d 1122, 1127 (1989).

32. Dr. Stevens first examined Claimant on May 10, 2004, when she reported the onset of back pain localized to the whole back with heavy lifting over the prior week. He diagnosed acute lumbar strain and treated Claimant for the following several weeks until her symptoms were almost entirely resolved. Dr. Stevens later opined that Claimant suffered no permanent impairment due to her industrial accident.

33. Orthopedic surgeon John McNulty, M.D., examined Claimant on November 14, 2005, at Defendants' request. Dr. McNulty opined that Claimant's intermittent chronic groin pain is due to her pre-existing dysplastic right hip, and that her occasional lateral pain could be from her hip or back. He noted Claimant had an abnormal gait favoring her right hip with decreased range of motion in the right hip. Dr. McNulty found Claimant had good range of motion in the lumbar spine,

with normal reflexes and no indication of a herniated disc or even acute low back pain. He emphasized that Claimant did not describe immediate onset of back pain from any particular lifting incident at WalMart. Rather, she described the onset of muscle fatigue after several hours of lifting followed by pushing carts. He noted that her back pain resolved during the following month. Dr. McNulty diagnosed right hip dysplasia, and chronic left sacroiliitis and right hip greater trochanter bursitis resulting from her abnormal gait. Dr. McNulty opined that Claimant suffered an acute lumbosacral strain due to her May 3, 2004, industrial accident at WalMart. He testified that Claimant's lumbar MRI scan showed degenerative changes including multilevel disc bulges and a small annular tear at L5-S1. However, Dr. McNulty testified that per physical therapist Keith Kirscher's report to Dr. Stevens on June 4, 2004, Claimant had made a good recovery from her injury at WalMart when she was discharged from therapy. Dr. McNulty therefore opined that Claimant suffered no permanent impairment due to her industrial accident.

34. Orthopedic surgeon, Michael DiBenedetto, M.D., first saw Claimant on November 15, 2004. Dr. DiBenedetto was not aware Claimant's work at Lignetics on August 24, 2004, rendered her bed-ridden with back pain for several days. Dr. DiBenedetto acknowledged that his examinations of Claimant from December 2004, through November 2005, were all examinations of her hip. There is almost no record of back pain complaints or examination. Nevertheless, Dr. DiBenedetto rated Claimant's low back impairment at 3% to 5% of the whole person due to her industrial accident using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, and a DRE II category.

35. The record establishes that since her industrial accident, Claimant has fairly consistently experienced limiting back pain in her work attempts involving lifting and bending as

was the case with her single day of work at Lignetics. While Claimant's back and hip conditions tend to mask and significantly influence each other, the Referee finds Dr. DiBenedetto's opinion persuasive, as Claimant's treating orthopedist, and as demonstrated by evidence of Claimant's recurring back symptoms. Claimant suffers permanent impairment of 4% of the whole person due to her industrial accident.

36. **Hip aggravation.** Claimant asserts that her May 3, 2004, industrial accident also aggravated her pre-existing right hip dysplasia for which she claims medical benefits. Specifically, while no physician is presently recommending such, Claimant requests that her case remain open for possible total hip replacement surgery at some future time.

37. A claimant must prove not only that he or she was injured, but also that the injury was the result of an accident arising out of and in the course of employment. Seamans v. Maaco Auto Painting, 128 Idaho 747, 751, 918 P.2d 1192, 1196 (1996). A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. Langley v. State, Industrial Special Indemnity Fund, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). "Probable" is defined as "having more evidence for than against." Fisher v. Bunker Hill Company, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974).

38. Various medical records establish that Claimant has suffered with her right hip intermittently for many years.

39. Dr. Stevens's notes of May 10, 2004, record Claimant's complaints of back pain after her industrial accident, but are silent as to hip pain. He diagnosed only lumbar strain. His May 17, 2004, notes again record Claimant's complaints of back pain, and his impressions of lumbar and SI strain. By May 26, 2004, Dr. Stevens noted Claimant's SI pain was reduced with some continuing

lumbar discomfort. He increased Claimant's lifting restriction to 30 pounds.

40. The physical therapist's notes from June 2004 record Claimant's complaints of hip pain, and also record Claimant's own perceptions that at least in one instance her hip was "out" secondary to sleeping wrong.

41. Dr. Stevens noted by June 7, 2004, that Claimant was much improved with normal lumbar forward and lateral flexion range and only slight lumbar or sacral pain on full forward flexion. He released Claimant to full work. Dr. Stevens determined that Claimant had no permanent impairment as a result of her industrial injury. Claimant did not see Dr. Stevens again until November 8, 2004, when she presented primarily with hip symptoms and some low back pain secondary to altered gait and mechanics from her hip arthralgia.

42. Dr. McNulty opined that Dr. Stevens's records did not reflect any definite indication that Claimant's industrial accident aggravated her hip condition. Dr. McNulty also agreed with Dr. DiBenedetto that Claimant had sacroiliitis caused by her hip dysplasia and that Claimant's bone scan did not show any evidence of a lighting up of any conditions.

43. Dr. DiBenedetto first examined Claimant on November 15, 2004. He recorded her description of back, hip, and sacroiliac pain. Dr. DiBenedetto opined that Claimant's hip dysplasia was congenital and not of industrial origin. Dr. DiBenedetto acknowledged that all of Claimant's visits to him from December 2004 through November 2005 focused on hip rather than back pain. He recorded no back pain complaints during that time. While Dr. DiBenedetto's early notes from November 2004 suggest he may have initially considered Claimant's hip pain related to her industrial accident at WalMart, his later notes of November 18, 2005, and his deposition testimony

clearly indicate that he concluded Claimant's right hip pain was not attributable to her industrial accident.

44. Steven Puffer, M.D., Claimant's family physician, opined that Claimant's dysplastic right hip is congenital and will progressively worsen over time and eventually require surgical management.

45. The record contains no current medical opinion relating Claimant's right hip pain to her industrial accident, rather, the medical evidence attributes Claimant's hip pain to her pre-existing hip dysplasia.

46. The Referee finds that Claimant has not proven that her right hip dysplasia was aggravated by her industrial accident. Inasmuch as Claimant has not proven that her hip dysplasia was aggravated by her industrial accident, Defendants are not responsible for medical treatment relating to her hip dysplasia.

47. **Permanent Disability.** "Permanent disability" or "under a permanent disability" results when the actual or presumed ability to engage in gainful activity is reduced or absent because of permanent impairment and no fundamental or marked change in the future can be reasonably expected. Idaho Code § 72-423. "Evaluation (rating) of permanent disability" is an appraisal of the injured employee's present and probable future ability to engage in gainful activity as it is affected by the medical factor of permanent impairment and by pertinent nonmedical factors provided in Idaho Code § 72-430. Idaho Code § 72-425. Idaho Code § 72-430 (1) provides that in determining percentages of permanent disabilities, account should be taken of the nature of the physical disablement, the disfigurement if of a kind likely to handicap the employee in procuring or holding employment, the cumulative effect of multiple injuries, the occupation of the employee, and his or

her age at the time of accident causing the injury, or manifestation of the occupational disease, consideration being given to the diminished ability of the affected employee to compete in an open labor market within a reasonable geographical area considering all the personal and economic circumstances of the employee, and other factors as the Commission may deem relevant.

48. The degree of permanent disability suffered by a claimant is a factual question committed to the particular expertise of the Commission. McClurg v. Yanke Machine Shop, Inc., 123 Idaho 174, 176, 845 P.2d 1207, 1209 (1993). Wage loss may be a factor. Baldner v. Bennett's Inc., 103 Idaho 458, 649 P.2d 1214 (1982). The test for determining whether a claimant has suffered a permanent disability greater than permanent impairment is "whether the physical impairment, taken in conjunction with non-medical factors, has reduced the claimant's capacity for gainful employment." Graybill v. Swift & Company, 115 Idaho 293, 294, 766 P.2d 763, 764 (1988). In sum, the focus of a determination of permanent disability is on the claimant's ability to engage in gainful activity. Sund v. Gambrel, 127 Idaho 3, 7, 896 P.2d 329, 333 (1995).

49. In the present case, Claimant was working at WalMart and testified she was earning \$8.92 per hour at the time of her industrial accident. She was earning \$8.00 per hour at the time of hearing. This represents slightly more than a 10% difference in actual wages.

50. Various physicians have opined regarding physical restrictions arising from Claimant's industrial accident as well as restrictions arising from her congenital hip dysplasia.

51. Dr. DiBenedetto restricted Claimant to lifting 10 pounds frequently and 35 pounds occasionally due to her industrial back injury. Drs. Stevens and McNulty found no impairment and attributed no restrictions to Claimant's back injury.

52. Dr. DiBenedetto opined that Claimant's hip dysplasia warranted physical restrictions

of no prolonged standing or walking, stair or ladder climbing, and a lifting restriction of 30 to 35 pounds. Dr. McNulty opined that Claimant's right hip dysplasia warranted physical restrictions of no lifting in excess of 20 pounds, and avoiding squatting, stooping, and prolonged standing or walking especially on uneven terrain. Dr. McNulty testified Claimant could not return to a medium level job, and that Claimant could not return to her job at WalMart due to her hip dysplasia. Dr. Puffer opined that Claimant's walking and standing should not total more than one hour per day due to her congenital hip dysplasia.

53. Vocational rehabilitation expert Douglas Crum reviewed the various medical restrictions and testified on behalf of Defendants that considering solely Claimant's low back restrictions, she had lost access to approximately 15 to 20% of the available labor market. However, Crum also testified that Claimant's industrial low back restrictions did not produce any further disability beyond that already arising from her hip dysplasia. Crum affirmed that the restrictions due to Claimant's hip dysplasia effectively exclude her from any jobs with physical demands exceeding the restrictions arising from her industrial back injury. Crum's analysis is well explained and sound.

54. Based on Claimant's impairment rating of 4% of the whole person, and her various medical and non-medical factors, Claimant's ability to engage in gainful activity has been reduced. However, the medical restrictions arising from Claimant's congenital hip dysplasia exclude her from the same positions excluded by the restrictions arising from her industrial back injury. Thus Claimant's restrictions from her industrial injury have no effective impact on her actual ability to engage in gainful employment.

55. Claimant has not established her entitlement to any permanent disability in excess of her permanent impairment.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 15

56. **Total temporary disability.** Claimant alleges entitlement to additional total temporary disability benefits for the periods totaling approximately nine months during which she did not work between July 15, 2004, and July 28, 2005.

57. Dr. Stevens determined that Claimant reached maximum medical improvement by August 30, 2004, and had no permanent impairment as a result of her industrial injury.

58. Dr. McNulty testified that per physical therapist Keith Kirscher's report to Dr. Stevens on June 4, 2004, Claimant had made a good recovery from her injury at WalMart when she was discharged from therapy. Dr. McNulty opined that Claimant reached maximum medical improvement by June 7, 2004.

59. Dr. DiBenedetto did not rate Claimant's permanent impairment until November 2005, however, he did not opine that Claimant was still in a period of recovery from her industrial back injury until the time he rated her impairment. Claimant did not receive any significant treatment for her low back after approximately June 2004. Between November 2004, and December 2005, Dr. DiBenedetto, her treating orthopedist, did not even record any low back complaints or provide any specific treatment for her low back, except after her motor vehicle accident in January 2005.

60. Claimant's intermittent back symptoms after June 2004 are consistent with her 4% permanent partial impairment as aggravated by such intervening factors as repeated bending at Lignetics, and a motor vehicle accident, and confirm that her back condition could not be further improved by additional medical treatment.

61. The Referee concludes that Claimant reached maximum medical improvement from her low back injury by June 7, 2004. She has not proven her entitlement to additional temporary disability benefits.

CONCLUSIONS OF LAW

1. Claimant has proven she suffers permanent partial impairment of 4% of the whole person due to her industrial accident.
2. Claimant has not proven that her industrial accident aggravated her right hip dysplasia, thus Claimant is not entitled to medical benefits for her hip dysplasia.
3. Claimant has not proven she suffers any permanent disability due to her industrial injury in excess of her 4% permanent impairment.
4. Claimant has not proven her entitlement to additional temporary disability benefits.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusions of Law as its own, and issue an appropriate final order.

DATED this 26th day of January, 2007.

INDUSTRIAL COMMISSION

/s/
Alan Reed Taylor, Referee

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of January, 2007, a true and correct copy of **Findings of Fact, Conclusions of Law, and Recommendation** was served by regular United States Mail upon each of the following:

EDGAR L ANNAN
5915 S REGAL ST STE 210
SPOKANE WA 99223

ALAN K HULL
PO BOX 7426
BOISE ID 83707-7426

lbs

/s/